

partnership, or company as an employer, is retroactive; or

(iv) Where a record of compensation could not otherwise be corrected under this part and where in the judgment of the three-member Board that heads the Railroad Retirement Board failure to make a correction would be inequitable.

(c) *Limitation on crediting service.* (1) Except as provided in paragraph (b)(1) of this section, no employee may be credited with service months or tier II compensation beyond the four year period referred to in paragraph (a) of this section unless the employee establishes to the satisfaction of the Board that all employment taxes imposed by sections 3201, 3211, and 3221 of title 26 of the Internal Revenue Code have been paid with respect to the compensation and service.

(2) The limitation on the creditability of service months and tier II compensation in paragraph (c)(1) of this section shall not affect the creditability, for purposes of computing the tier I component of a railroad retirement annuity, of compensation payments with respect to which taxes have been paid under either the Railroad Retirement Tax Act or the Federal Insurance Contributions Act.

[62 FR 3790, Jan. 27, 1997]

PART 212—MILITARY SERVICE

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§ 212.1 General.

In determining an individual's entitlement and amount of benefits under the Railroad Retirement Act, an individual's military service creditable under the Railroad Retirement Act is used. This part defines military service as used under this Act and sets forth the criteria to determine the creditability of military service.

§ 212.2 Military service defined.

Military service is the performance of active service by an individual in the armed forces of the United States. An individual is considered to be in active military service when commissioned or enrolled in the land, naval or air forces of the United States until resignation or discharge therefrom. The service of an individual in any reserve component of the land, naval or air forces of the United States, during any period in which ordered to active duty, even though less than thirty days, is also considered active service. However, service in the Army Specialist Corps and the Merchant Marine is not creditable under the Railroad Retirement Act.

§ 212.3 Crediting of military service.

In determining an individual's entitlement to an annuity and the amount of annuity to be paid under the Railroad Retirement Act, a calendar month or part of a calendar month during which the individual was in the active military service of the United States in a war service period, or period of national emergency, as determined in § 212.4 of this part, may be included in the individual's years of service. Military service is credited as though the individual had performed service for a railroad employer as provided for in part 210 of this chapter, provided that the individual is credited with railroad service in the year of or the year before entrance into active military service. Compensation for creditable military service shall be credited as provided for in § 211.7 of this chapter.

§ 212.4 Periods of creditable military service.

In order for military service to be considered to be creditable under the Railroad Retirement Act, it must have been performed during one of the following periods:

(a) April 21, 1898, through August 13, 1898—Spanish American War;

(b) February 4, 1899, through April 27, 1902—Philippine Insurrection;

(c) May 9, 1916, through February 5, 1917—Mexican Border Disturbances;

(d) April 6, 1917, through November 11, 1918—World War I;

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(e) September 8, 1939, through June 14, 1948—National Emergency and World War II. Individuals required to continue in service after this period may be credited with the service if:

(1) They were in military service on December 31, 1946, or

(2) They were required to remain in military service involuntarily after December 31, 1946;

(f) June 15, 1948, through December 15, 1950. This service is creditable if:

(1) Entered into involuntarily; or

(2) Entered into voluntarily, but only if:

(i) The individual who seeks credit for this service performs service as an employee for an employer as defined in part 202 of this chapter either in the year of his or her release from active military service or in the year following such release, and;

(ii) The individual does not engage in any employment not covered by part 203 between his or her release from active military service and his or her commencement of service for an employer.

(g) December 16, 1950, through September 14, 1978—National Emergency.

[49 FR 46734, Nov. 28, 1984, as amended at 55 FR 20454, May 17, 1990]

§212.5 Verification of military service.

Military service may be verified by the following proof:

(a) The original certificate of discharge or release to inactive duty from a branch of the armed forces that shows the beginning and ending dates of the individual's active military service; or a certified copy of the original certificate made by the Federal, State, county or municipal agency or department in which the original certificate is recorded; or

(b) A certificate from a branch of the armed forces that shows the beginning and ending dates of the individual's active military service; or

(c) A photocopy of the document described in paragraph (a) or (b) of this section.

§212.6 Board's determination for use of military service.

(a) Military service may be creditable under both the Railroad Retirement and Social Security Acts, but

there are provisions under those Acts to prevent duplicate use of the service. The Railroad Retirement Board will determine whether an employee's military service should be used as railroad service or as Social Security service. The Board's determination is intended to be to the employee's advantage; however, if the employee does not agree with the Board's determination for use of the employee's military service, the employee may request that it be changed.

(b) Generally, it is to the employee's advantage for the employee's military service to be creditable as railroad service where any of the following conditions may be met with the use of the employee's military service as railroad service:

(1) It gives the employee 10 years of service (120 months), which is the minimum needed to qualify for an annuity based on age and service or total disability, as provided for in part 216, subpart B; or

(2) It gives the employee 20 years of service (240 months), which is the minimum needed to qualify for an occupational disability annuity, as provided for in §216.6 of this chapter; or

(3) It gives the employee 25 years of service (300 months), which is the minimum needed to qualify for a supplemental annuity, as provided for in part 216, subpart C; or

(4) It gives the employee 30 years of service (360 months), which would allow the employee to retire at age 60 with a full annuity and will also provide a full annuity to a qualified spouse at age 60, as provided for in part 216, subparts B and D; or

(5) It gives the employee sufficient railroad service to entitle the employee to vested dual benefit payments, as provided for in part 216, subpart H.

(c) In certain cases it may be to the employee's advantage for the employee's military service to be credited under the Social Security Act. This is generally true under the following conditions:

(1) Crediting the military service under the Social Security Act would entitle the employee and any eligible children to social security benefits, since direct benefits are not payable to